WP(C) 4883/2003
BEFORE
HON'BLR MR JUSTICE AMITAVA ROY

JUDGEMENT AND ORDER(ORAL)

The W.T. message dated 13.12.2002 issued by the Commissioner & Secretary to the Government of Assam, Education Department keeping in abeyance the adjustment orders regularizing the petitioners' services is under challenge. While issuing notice on 24.6.2003 this Court had directed the State respondents to release their salary observing that their (petitioners) services having been regularized in terms of the orders passed by this Court in Civil Rule No.3161/95, WP(C) No.344/2001 and Writ Appeal No.474/97, the aforementioned WT message could not adversely affect their service conditions.

2. I have heard Mr PK Goswami, Senior Advocate for the petitioners, Mr MR Pathak, learned Standing counsel, Education Department and Mr D.Saikia, learned Standing counsel, Finance Department, for the respondents.

3. The pleaded case of the petitioners who are all Assistant Teachers of different ME Madrassas of the State is that ,following their exclusion from the process of regularization along with others similarly situated , the All Assam Middle English Teachers Association, Guwahati approached this Court with Civil Rule No.3161/1996 and this Court vide order dated 14.11.2000 directed the respondents to examine and verify the cases of the teachers represented therein in terms of the notification dated 21.6.2000. That the present petitioner Nos 3 and 4 also filed another writ petition being No.WP(C) No.5251/1999 along with 13 others and this Court by order dated 25.11.1999 directed the petitioners to file a representation before the District Elementary Education Officer, Goalpara to consider their prayer for regularization of service in terms of the judgment and order dated 13.11.1998 passed in Writ Appeal No.474/1997. Another proceeding being WP(C) no.344/2001 was initiated by 38 other teachers reiterating the above prayer. This petition was also disposed of on 12.1.2001 with a direction to refer the matter to a Committee constituted by the government on 21.6.2000. In view of the various orders of this Court, the State respondents constituted a Task Force Committee to examine the issue of regularization of teachers who had been dropped in the year of 1991. The petitioners in their representation before the committee relied on the above orders of this Court. Eventually, in compliance thereof, by order dated 30.11.2002 of the Director of Elementary Education, Assam the services of the petitioners were regularized against vacant posts. It was thereafter that by the impugned WT message the orders of regularization were sought to be stayed.

4. No affidavit in opposition has been filed by the State respondents.

5. In Writ Appeal No.474/1979 vide order dated 13.11.1998 the following operative directions were issued taking note of the contemporaneous official correspondences on the issue :-

In view of the aforesaid developments, we dispose of this appeal with a direction that the process of regularization /provincialisation of 1123 teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 would be completed within a period of 3 months from today.

For the purpose of enabling the Government to complete the process of regularization/provincialisation, the appellants association will furnish all necessary documents and particulars including names of concerned assistant teachers to the Director of Elementary Education, Assam, within 2 weeks from today. It will be open for the State Government to consider regularization/provincialisation of Assistant teachers dropped at the time of provincialisation of ME and ME Madrassas during the year 1991-92 in addition to 1123 Assistant teachers in case they find genuineness in the claims of such additional assistant teachers .

6. Mr Goswami has argued that the petitioners having been appo

inted in terms of the liberty granted by this Court in its order dated 13.11.1998 passed in Writ Appeal No.474/1997 to regularize/provincialise teachers beyond 1123 Assistant teachers represented therein as well as other orders passed in subsequent writ proceedings, the decision to keep their regularization orders in abeyance as conveyed by the impugned WT message is patently ,arbitrary and repugnant to letter and spirit of the determination of this Court and is thus liable to be set aside. He maintained that in the factual background in which the petitioners services have been regularised/ provincialsied, this WT message has no application to them.

7. The learned State counsel for the Respondents have not controverted the sequence of events leading to the regularization/provincialisation of the services of the petitioners.

8. The rival submissions have received the due consideration of this Court. Though admittedly the present petitioners are not included within the 1123 Asstt. teachers involved in the above writ appeal, it is clear from the order dated 13.11.1998 that this Court had not contemplated to deprive the similarly situated teachers with identical grievance and therefore had permitted the State respondents to regularize/provincialise their services if their claims were determined to be genuine. The petitioners in phases approached this Court and eventually their discontentment on the issue of non regularization of their services was redressed in deference to the various orders passed by this Court in the different proceedings. The petitioners were thus extended the reliefs as sought for by the order dated 30.11.2002 which proclaims that it was in compliance of the orders of this Court referred to therein. In that view of the matter, I am of the considered opinion that the impugned decision to suspend the petitioners' regularization orders cannot be sustained. Having regard to the flow of events following the order dated 13.11.1998 and the conscious decision of the State respondents to regularize the petitioners' services after a threadbare scrutiny of their claims, the course as suggested by the impugned WT message cannot be judicially approved. The same is therefore adjudged as illegal, inoperative, non est in law vis- -vis the petitioners . The order dated 24.6.2003 of this Court is made absolute.

9. The petition stands allowed. No costs.